 OLC 72-0927-A

28 AUG 1972

Mr. Raymond Jacobson, Director
Bureau of Policies and Standards
Civil Service Commission
Washington, D. C. 20415

Dear Mr. Jacobson:

This is to thank you for sending us a copy of Chairman Hampton's 10 August 1972 letter to Chairman Celler concerning Title II of H. R. 12652 and to request your views on the enclosed proposed letter to Chairman Celler from the Director.

Chairman Hampton's letter presents a strong and persuasive case and our only hope is that it will have the impact which it merits.

A thought that has occurred to us is that it may be helpful if someone would alert the Judicial Conference of the United States to the impending legislation and get them to weigh in on those aspects principally concerned with judicial administration. This would include (1) the Conference's 1969 disapproval of that element of the bill which would permit court access prior to the exhaustion of administrative remedies, and (2) resistance to legislation which would increase the case burden on the Federal judiciary which was the subject of Chief Justice Burger's comments to the American Bar Association in San Francisco last week (newsstory enclosed) and which was a point which had favorable impact on the few occasions when we used it on the Hill. It would seem that the Judicial Conference would carry great weight with Chairman Celler and his colleagues.

If you would be kind enough to give us your views on the enclosed proposed letter as soon as it is convenient, it would be helpful as we have been advised by the House Judiciary Committee staff members that a letter from the Director to Chairman Celler would be helpful.

Sincerely,

[redacted]

STATINTL

Acting Legislative Counsel

Enclosure

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THE WASHINGTON POST DATE Tues., 15 Aug. PAGE A3

Burger Cautions Hill on Legislation

By Charlotte Moulton
United Press International

SAN FRANCISCO, Aug. 14 — Chief Justice Warren E. Burger suggested today that because of an "explosive increase" in federal lawsuits, Congress give more attention to the practical effects of legislation that creates work for federal courts.

Noting that the lawmakers now require federal agencies to prepare an "Environmental Impact" statement for such projects as new highways, the Chief Justice said the same kind of background on the effect of a new law could be delivered to the House and Senate Judiciary Committees by whatever congressional committee is proposing the bill.

In his annual "State of the Judiciary" message to the opening assembly of the American Bar Association, Burger also pleaded for more judges and probation officers, the abolishing of three-judge federal courts, and more funds for research in judicial administration.

He called on the ABA to support legislation now before Congress looking toward realignment of the present 11 federal circuits to allow for population shifts and prepare "for the onslaught of litigation in the final third of the century."

He said appeals in the 11 courts of appeals have increased from 4,200 in 1962 to 14,500 in 1972. In the same period, filings in U.S. district courts have increased from 92,000 to 145,000 and the projection for 1990 is 350,000.

Burger said there are now 620 federal judges but 900 will be needed by 1990, with 40 or 50 more needed right now.

Describing the need for probation officers, who supervise convicted persons not sentenced to jail, Burger said some of the 640 officers now [illegible] to 800 which they should [illegible].

Three-judge courts, composed of a mixture of district and circuit judges, were originally established so as not to place on a single judge the responsibility for resolving important constitutional challenges to state and federal laws and to provide an immediate appeal to the Supreme Court.

Burger said they have disrupted the judges' work and their existence is no longer justified.

At the opening of the ABA meeting Sunday, a high Nixon administration official suggested curtailing the rights of criminal defendants in some cases and allowing the introduction of evidence now excluded because it was illegally obtained.

Assistant Attorney General Henry E. Petersen, head of the Justice Department's criminal division, also proposed tailoring the rights of defendants to the severity of the crime with which they are charged.

"It should not be necessary to provide the same degree of protection" to a defendant in a murder case and one who has been charged with public intoxication, Petersen said. He suggested for example, that six-member instead of 12-member juries could be used in cases including minor offenses.

As for the use of illegally obtained evidence, "unlike coerced confessions, probative evidence is reliable, regardless of the manner in which it is seized," Petersen said.

Petersen made his suggestions for altering the criminal process in a speech before the ABA's section on bar activities.

He suggested taking such offenses as traffic violations out of the criminal justice process and imposing other than criminal penalties in certain instances.

"For example, if a businessman violates a safety regulation, should he be subjected to criminal penalties or would a better remedy be to close down his business concern until he is in compliance with the regulation?" Petersen asked.

He said that civil administrative proceedings also offer possibilities for taking the load off the courts. Another strong deterrent to crime would be making the offender restore the loss to the injured party, he said.

Petersen said it was the "demands of everyday reality that led me to question the basic proposition involved—that is, I quesiton the wisdom of a system which affords every defendant the same degree of protection.

"First, is it necessary to do so in order to assure justice? Second, can the system continue to function if we do not differentiate?"